

## **REMARKS**

### **Claims**

Claims 1-5 remain pending in the application with claim 1 in independent form. No amendments have been made to the claims.

### **Claim Objections**

Claims 1-5 stand objected to for informalities, specifically the use of the phrase “characterized in that”.

Claims 1-5 were amended in the Amendment submitted on May 24, 2010 (“the previous Amendment”) to remove this phrase. As such, it is respectfully suggested that this objection has already been overcome.

### **Claim Rejections under 35 U.S.C. §§ 102 and 103**

Claims 1, 2, 4, and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Krohn et al. (U.S. Patent No. 5,787,874). Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Krohn et al. in view of Welz, Jr. et al. (U.S. Patent No. 6,247,919). Claims 1-5 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over HeaTec (European Patent Document No. EP 1 188 989 A2) in view of Saunier (French Patent Document No. 2 561 757 A).

### **Rejection of Claims 1-3 and 5 under 35 U.S.C. § 102 as anticipated by Krohn et al.**

As the Examiner is aware, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior

art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). With respect to the rejection of claim 1 as being anticipated by Krohn et al., it is respectfully suggested that Krohn et al. fails to disclose, teach, or suggest each and every element recited by claim 1.

Claim 1 recites the following:

Gas regulating fitting for a gas fire or the like with a thermoelectric flame failure device valve (17) and a main valve (35) which serve jointly both as a flame failure device and as a means of dividing the flow of gas into a flow of gas for a main burner (33) and a pilot burner (32), with a control unit (8) positioned downstream of the main valve (35) for controlling the flow of gas flowing to the main burner (33) and with additional, secondary functional elements, wherein the gas regulating fitting has a sensor (34) by means of which the operating condition of the main burner (33) is ascertained, whereby the sensor (34) is connected to the thermoelectric flame failure device valve (17) in such a way that on a change in the operating condition of the main burner (33) from "On" to "Off", a signal emitted by the sensor (34) causes the thermoelectric flame failure device valve (17) to assume its closed position. (emphasis added)

Importantly, as emphasized above, claim 1 recites two separate valves: a main valve (35) and a flame failure device valve (17). In contrast, Krohn et al. discloses only a single valve, the “main gas valve 5”. As such, the recited claim includes an element that is simply not present in Krohn et al.

This distinction was noted in the previous Amendment. In the Response to Arguments section of the June 28, 2010 Office Action (“the current Office Action”), the Examiner asserts that since claim 1 recites “a thermoelectric flame failure device valve and a main valve which serve jointly both as a flame failure device and as a means for dividing the flow gas” then, by applying a “broadest reasonable interpretation” that “there is nothing in the claim to suggest two separate and distinct valves as alleged valves as

alleged by applicant”. It is respectfully suggested that this conclusion is incorrect, for a number of reasons.

First, it appears that the Examiner is using functional language, i.e., “which serve jointly both as a flame failure device and as a means of dividing the flow of gas into a flow of gas,” to conclude that two positively recited valves are actually one valve. However, the mere fact that two devices work in concert to provide a particular result, does not mean that the devices are, in fact, one device.

Second, and importantly, claims during patent examination are not merely given their “broadest reasonable interpretation,” but rather given their broadest reasonable interpretation consistent with the specification (see MPEP § 2111). Moreover, the Court of Appeals for the Federal Circuit, in *Phillips v. AWH Corp.*, 415 F.3d 1305 (2005), stated that “[t]he Patent and Trademark Office ... determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art.” (emphasis added)

When one looks at the claims in light of the specification, there can be no doubt that the thermoelectric flame failure device valve and the main valve are separate and distinct valves. There are numerous illustrations in the specification which support the fact that the valves are separate and distinct. A few of these illustrations include:

- the two valves are identified throughout the specification, and even in claim 1, with separate element numbers 17 and 35 (see page 7);
- the two valves each have their own actuation mechanism -- an electromagnet 11 and a spring 13 control opening and closing of the main valve 35 while a thermoelectric flame failure device magnet 18 controls operation of the flame failure device valve 17 (see page 4); and

- a pilot gas outlet 3 is located between the flame failure device valve 17 and the main valve 35 (see page 4, lines 19-20)

Other illustrations which support the fact that the thermoelectric flame failure device valve and the main valve are separate and distinct valves may be found in the specification and/or the drawings.

As stated in the previous Amendment, and as not contested by the Examiner, Krohn et al. simply does not disclose, teach, or suggest the use of multiple valves as recited by claim 1. Since a claim is anticipated only if each and every element is found in a single prior art reference, claim 1 is plainly not anticipated by Krohn et al. As such, it is respectfully suggested that the rejection of claim 1 under §102(b) has been traversed. As such, it is also respectfully requested that the Examiner withdraw this rejection.

Rejection of Claims 1-5 under 35 U.S.C. § 103 under HeaTec and Saunier

As the Examiner is aware, 37 CFR § 1.104(c)(2) states that “[i]n rejecting claims ... for obviousness, the examiner must cite the best references at his or her command” and that “[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.” (emphasis added) MPEP § 2142 also states that “the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”

In rejecting claims 1-5 under § 103(a) as being unpatentable under HeaTec in view of Saunier, the Examiner simply does not explain the pertinence of these references for each and every claim. Instead, the Examiner merely refers to the International

Preliminary Report on Patentability (“IPRP”) for the corresponding PCT International Application No. PCT/EP2005/002522. In the Response to Arguments section of the current Office Action, the Examiner goes on to assert that “[t]o overcome the rejection[,], applicant is required to address the issues raised in the [IPRP] and explain why the reasoning set forth by the international patent examiner fails to support the obviousness rejection of the claims.” That is, the Examiner appears to be stating that the clear explanation of the pertinence of each reference required by 37 CFR § 1.104(c)(2) is embodied in the IPRP, which was prepared by the European Patent Office (“EPO”).

However, it is respectfully suggested that this approach is misplaced. The Attorney for the Applicant simply cannot verify the assertions made by the EPO examiner in the IPRP, as the prior art references cited by the IPRP are not in English. Specifically, HeaTec appears to be written in German while Saunier appears to be written in French. The Attorney for the Applicant does not have a working knowledge of these languages and, frankly, is not required to. MPEP § 706.02(II) states that “[i]f a document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection.” (emphasis added) As noted in the previous Amendment, translations may be obtained from the Translations Branch of the Scientific and Technical Information Center (STIC) as outlined in § 901.05(d) of the MPEP.

Instead of obtaining these translations as required, the Examiner has attempted to shift the burden of providing English translations back to the applicant. Specifically, in the Response to Arguments section of the current Office Action, the Examiner states that

“[a]s regards an English translation [of the] German document, applicant is in the best position to have such a document.” It is respectfully suggested that this is incorrect. The Examiner simply has no knowledge as to whether or not the Applicants, Jürgen Blank and Barbara Happe, have sufficient mastery of German, French, and English languages in order to prepare and provide translations of HeaTec and Saunier into English. Moreover, as stated above, it is simply not the responsibility of Applicants to provide translations of foreign language documents cited by the Examiner into English.

Lastly, it should be noted that the IPRP does not appear to specifically address the recitations of claim 5. Instead, only dependent claims 2-4 are addressed.

For the above reasons, it is respectfully suggested that the rejection of claims 1-5 under 35 U.S.C. §103(a) as being unpatentable under HeaTec in view of Saunier is traversed. As such, it is also respectfully requested that the Examiner either withdraw this rejection or provide suitable translations of HeaTec and Saunier such that the assertions made by the EPO may be verified.

As both rejections of claim 1 have been traversed, it is respectfully suggested that this claim is allowable. Claims 2-5 are dependent, either directly or indirectly, on the novel and nonobvious claim 1, such that these claims are also allowable. As no amendments to the claims have been made in this Request for Reconsideration and the amendments made in the previous Amendment were not of a substantive nature, it is requested that the **Finality of the current Office Action be withdrawn** and that either (1) a Notice of Allowance is issued or (2) a proper non-final Office Action be issued.

**Applicant: Blank et al.**  
**Serial No.: 10/592,002**

It is also respectfully noted that related patent applications have been issued as Australian Patent No. 2005220312 B2 on September 18, 2009 and as German Patent No. DE 20 2004 021 583 U1 on June 25, 2009.

It is respectfully submitted that the application is now presented in condition for allowance. It is believed that no fees are due at this time. However, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayment.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS PLLC**

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**August 30, 2010**  
Date

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